IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No.218 of 1994.

Date of decision: 20.11.2006.

Ved Parkash .....Appellant

-Versus-

Bhupia @ Bhup Singh & others ....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? yes

For the Appellant: Mr.Rakesh Jaswal, Advocate.

For Respondents: Mr.Bimal Gupta, counsel for respondents 1&2.
Ms.Devyani Sharma, counsel for Respondent No.3.

Deepak Gupta, J. (Oral)

The only question which arises for decision in this appeal is whether the amount deposited by the appellant-owner from time to time in pursuance to an award passed by a Motor Accident Claims Tribunal (MACT) has first to be adjusted towards interest or costs or to the principal amount as awarded by the Tribunal.

The law is well settled that under the provisions of Order 21 of the Code of Civil Procedure the payments, if any, made by the JD have first to be adjusted towards the amount of costs and interest and only thereafter towards the principal amount due unless the parties have agreed and specified to the contrary. This position of law has been

settled by the Apex Court in **Meghraj and others vs. Mst.Bayabai and others, AIR 1970 SC 161** wherein it has been held as follows:

> "The normal rule in the case of a debt due with interest is that any payment made by the debtor is in the first instance to be applied towards satisfaction of interest and thereafter to the principal."

In the present case the facts are that an award of Rs.2,15,000/- was passed in favour of the claimants and against Ved Parkash owner of the truck. The Insurance Company was exonerated. The awarded amount was to carry interest @ 12% p.a. from the date of petition to the date of deposit of the compensation. The owner of the truck did not deposit the amount in one go. At the time of filing the appeal, the owner only deposited the appeal amount of Rs.25,000/- which he was bound to deposit under the provisions of Section 173 of the Motor Vehicles Act. He, however, furnished security for payment of the balance amount. The appeal filed by the owner was dismissed on March 4, 2005. While dismissing the appeal on the prayer made by the learned counsel for the owner, the appellant was permitted to deposit the balance awarded amount in 3 months. Thereafter the owner filed CMP No.229 of 2005 and at his request he was permitted to deposit the balance awarded amount in four installments. The appellant actually deposited the amount in four installments i.e. Rs.1,19,000/- on 18.5.2005, Rs.1,19,000/- on 17.8.2005, Rs.1,19,000/- on 16.11.2005 and Rs.1,19,000/- on 1.3.2006.

The claimants claim that the amount deposited by the appellant in various installments has first to be adjusted towards interest and thereafter only the amount could be applied towards the principal and

according to the claimants a sum of Rs.31,707/- is still due. The claimant also filed another set of calculations that even if the amount is adjusted towards principal first then also a sum of Rs.5,270/- is still due. This amount of Rs.5,270/- has been deposited by the owner of the vehicle.

To appreciate the contention of the counsel for the claimants it would be pertinent to quote the following provisions of the Motor Vehicles Act:

> "**168.Award of the Claims Tribunal.—(1)** On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:
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> Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.
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> (2)The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3)When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

174. Recovery of money from insurer as arrear of land revenue.—where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

176.Power of State Government to make rules.- A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:-

(a)the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;

(b)the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c)the powers vested in a Civil court which may be exercised by a Claims Tribunal;

(d)the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e)any other matter which is to be, or may be, prescribed."

Rule 232 of the Himachal Pradesh Motor Vehicles Rules, 1999 which has been framed under the rule making powers vested in the State Government under Section 176 of the Act provides that the provisions of Order 21 CPC shall be applicable to proceedings before the Claims

Tribunal established under the Motor Vehicles Act. The said rule reads as follows:

> "**232. The code of Civil Procedure to apply in certain cases:-**
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> The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII; Rule 3 to 10; Order XVI, Rules 2 to 21; Order XVII; Order XXI and Order XXIII, rules 1 to 3."

No doubt a single Judge of this Court in **H.R.T.C. vs. Devi Singh and another, 2004 ACJ 1744,** has held that the Motor Accident Claims Tribunal has no jurisdiction to proceed with the execution petition as per the procedure laid down under the Civil Procedure Code. The learned single Judge keeping in view Section 174 of the Act came to the conclusion that the MACT has no jurisdiction to execute an award and it is only bound to issue a certificate and send the same for recovery to the Collector who shall recover the amount as arrears of land revenue. Referring to the Rule 232 of the Rules mentioned hereinabove it has been held that the same is not relevant in view of the provisions of Section 175.

Apparently, the judgment of the Apex Court in **Rajasthan State Road Transport Corporation vs. Poonam Pahwa and others, 1997 ACJ 1049,** was not brought to the notice of the learned single Judge. In that case the Apex Court was dealing with a similar Rule framed by the State of Punjab which had been made applicable to the State of Haryana. The Apex Court held as follows:

> "28.Order 21, rule 1, Civil Procedure Code as amended in 1976 expressly provides that the judgment-debtor shall give notice of

> the deposit of the decretal amount to the decree-holder either through the court or directly to the decree-holder. The obligation of giving the notice to the decree-holder is not absolved by simply depositing the amount without taking steps to ensure service of the notice of such deposit to the decree-holder through court or otherwise. Therefore, the appellant cannot escape its liability to pay interest to the decree-holder for the period between the date of deposit of the decretal amount and the date of notice of such deposit to the decree-holder."

One of the question raised before the Apex Court in that case was that the State of Haryana had applied unamended Rules as existing in the State of Punjab in the year 1964 and the amendments in the Rules were not applicable to the State of Haryana. The Apex Court in para 29 of its judgment went on to hold as under:

> "29.Even if it is assumed that by adopting the Punjab Motor Accidents Claims Tribunal Rules, 1964 the subsequent amendments effected in the said Rules were not adopted or incorporated y the State of Haryana and therefore, Order 21 of the Code of Civil Procedure cannot be held to be expressly applicable in the motor accidents Claims Tribunal Rules of Haryana, the appellant, in our view, can be fastened with the liability to pay interest for the aforesaid period on account of not giving notice of the deposit of the decretal amount to the decree-holder by applying the underlying principles of Order 21, rule 1 of the Civil Procedure Code. The Motor Accidents Claims Tribunal has been constituted under the Motor Vehicles Act to adjudicate the disputes arising out of claims on account of motor accidents. The Motor Accidents Claims Tribunal has been constituted by giving the exclusive jurisdiction to determine such disputes by excluding the jurisdiction of the civil courts. The Motor Accidents Claims Tribunal being a statutory judicial Tribunal specifically constituted for adjudicating the claims arising out of motor accidents, has the trappings of the court….."

Thereafter, the Apex Court also considered another judgment of the Apex Court in **Mathunni Mathai v. Hindustan Organic Chemicals Ltd., (1995) 4 SCC 26,** which had been delivered in the context of Land Acquisition Act and the Apex Court held as follows:

> "31.In Prem Nath Kapur v. National Fertilizers Corpn. of India, (1996) 2 SCC 71, the decision in Mathunni Mathai's case, (1995) 4 SCC 26, has been expressly overruled by a three-Judge Bench of this court on the finding that Order 21, rule 1 being inconsistent with the provisions contained in sections 34 and 28 of the Land Acquisition Act, such provision of the Civil Procedure Code cannot be extended to the execution of award made under Land Acquisition Act. Dr.Dhavan has rightly contended that in Prem Nath Kapur's case (supra) non-applicability of Order 21, rule 1, Civil Procedure Code on the score of inconsistency with provisions of Land Acquisition Act relating to awards under the said Act has been indicated and for the said reason, applicability of Order 21, rule 1, Civil Procedure Code as held in Mathunni Mathai's case (supra), has been overruled. But applicability of Order 21, Rule 1, Civil Procedure Code in other cases has not been discarded. On the contrary, it has been held in Prem Nath Kapur's case (supra) that the decision of this court in Meghraj v. Bayabai, (1969) 2 SCC 274, since relied in Mathunni's case (supra) is applicable to a debtor and creditor in an ordinary civil suit governed by the Civil Procedure Code.
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> 32.It appears to us that the provisions of Order 21, rule 1 are not in any way inconsistent with the provisions for awarding just and fair compensation in motor accident claims cases. The real purpose of awarding just and fair compensation to the victim of the accident or the legal heirs of such victim will be fulfilled by applying the principle of Order 21, rule 1, Civil Procedure Code so that the awardee is not deprived of the opportunity of gainfully

utilizing the amount under the award for want of notice about the deposit made by the judgment-debtor resulting in the sum remaining unutilized. In our view, therefore, there is no difficulty to apply the underlying principles under Order 21, rule 1, Civil Procedure Code in executing the award of compensation passed by the Motor Accidents Claims Tribunal and the Tribunal must be held to be competent to invoke the beneficial provisions of Order 21, rule 1, Civil Procedure Code.

33.We may indicate here that before the amendment of Order 21, rule 1, Civil Procedure Code by the Amending Act, 1976 on the question of liability of the judgment-debtor to give notice when the decretal amount is deposited in the court, the High Court took different views. In Laxminarayan Ganeshdas v. Ghasiram Dalchand Palliwal, AIR 1939 Nag 191, it has been held that where a decree orders the payment of a sum of money awarding interest until payment and the money is paid by payment into court under the provision of Order 21, rule 1, the interest does not run until notice has been given to the decree-holder under Order 21, rule 1(2) but ceases to run from the date of such payment. Such view of the Nagpur High Court was dissented from in a later decision by the Kerala High Court in State of Kerala v. Mahadeva Iyer Venkata Subramania Iyer, AIR 1969 Ker 8. The Kerala High Court in the said decision has held that where the interest is awarded by the decree on the decretal amount until payment, it does not cease to run merely by reason of the making of the deposit of the decretal amount into court unless it is followed up by the service of notice as required by clause (2). It is only when the factum of deposit is brought to the knowledge of the decree-holder by service of such notice that the deposit will amount to payment within the meaning of Order 21, rule 1. In taking the said view, the Kerala High Court has relied on the decision of other High Courts (Rangpur Raiyat Bank Ltd. V. Hesabuddin, AIR 1932 Cal 111, Special Land Acquisition Officer v. Ambalal Trikamlal, AIR 1951 Bombay 394, Janaki Amma Meenakshi Amma v. Mathiri, AIR 1952 Trav Co 236, Vinayak

Yeshwant Lad v. Shrikishan Chandmal Firm, AIR 1955 MB 126, Varki Ouseph v. Narayanan Parameswara Panicker, AIR 1956 Trav Co 46."

It is quite apparent that the judgment delivered by the learned single Judge of this Court is totally inconsistent with the law laid down by the Apex Court and as such it is per incurium and cannot be said to lay down the correct law.

It would also be pertinent to note that Section 168(3) of the Motor Vehicles Act provides that when an award is made by the Claims Tribunal the person who is required to pay any amount in terms of such award shall within 30 days of the date of announcement of the award of the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct. Rule 232 of the Motor Vehicle Rules is in consonance with the provisions of Section 168 (3) of the Motor Vehicles Act. Once the Tribunal has the power to direct that the awarded amount be deposited in a particular manner it would be palpably incorrect to hold that the Tribunal has no right or authority to effectively enforce its order. In case any other view is taken it would amount to nullifying the powers of the Tribunal conferred upon it under Section 168 (3) of the Act. While taking this view I am fortified by a judgment of the Kerela High Court in **Sobha Mohan Kumar v. National Insurance Co. Ltd. 2003 ACJ 418,** wherein in similar circumstances it was held that once the provision of Order 21 CPC had been made applicable to MACT the amounts deposited by the Insurance Company has to be appropriated in accordance with the procedure contemplated under Order 21 CPC.

Before parting with the matter I must observe that a Full Bench of the Madhya Pradesh High Court in **Sarmaniya Bai and others vs. Madhya Pradesh Rajya Parivahan Nigam and others, 1990 ACJ 862** held that every Court/Tribunal has the inherent jurisdiction to execute its own award. The question raised to be decided by the Full Bench was in the following terms:

> "Whether the Tribunal passing an award under the provisions of the Motor Vehicles Act for compensation to claimants for death or injuries lacks jurisdiction to enforce its award adopting procedure provided under C.P.C., exercising its inherent jurisdiction in that regard?"

Even though as per the Rules framed by the State of Madhya Pradesh the provisions of Order 21 CPC had not been made applicable to the Claims Tribunals established under the Motor Vehicles Act. The Full Bench answered this question in the negative and held that the Tribunal has the inherent jurisdiction to enforce its orders. I am in respectful agreement with this view.

Keeping in view the aforesaid discussion I am of the considered opinion that the Motor Accident Claims Tribunals have the right and authority both under the Act as well as under the Rules to execute their own awards. The State Government has rightly made Order 21 CPC applicable to the Claims Tribunal. Once the provisions of Order 21 CPC have been made applicable to the proceedings under the Motor Vehicles Act it necessarily follows that the amount deposited by the JD has to be applied/adjusted in terms of Order 21 (1)(i) of the CPC and the amount shall first have to be adjusted towards the interest and costs and thereafter to the principal awarded amount.

However, before parting to the case I want to enter a caveat that the above position will not apply to interim awards passed under Section 140 of the Motor Vehicles Act. The award passed under Section 140 is an independent award which can be appealed against separately. Therefore, the amount of compensation deposited in pursuance to the award passed under Section 140 has to be deposited at that stage itself. Obviously, the amount deposited has to be adjusted against the award passed under Section 140 of the Act. If while passing the final award under Section 166 a higher amount is awarded alongwith interest, the amount deposited to satisfy the award under Section 140 cannot be adjusted against the interest payable on the final award. This will deem to have been adjusted against the award passed under Section 140 of the Act.

There is no dispute with regard to the calculations in the present case and therefore the appellant is directed to deposit a sum of Rs.26,437/- within two months from today.

November 20, 2006. **(Deepak Gupta),**
PV **Judge**